

SEPARATION AGREEMENT AND RELEASE

This Separation Agreement and Release ("Agreement") is entered into between the City of Puyallup, and its officers, elected officials, employees, agents, and insurers (collectively referred to as the "City") and Kevin Yamamoto ("Yamamoto"). The City and Yamamoto are sometimes referred to collectively as the "Parties." Therefore, the City on the one hand and Yamamoto on the other hand, intending to be legally bound, agree as follows:

1. **No Admission of Liability.** The Parties agree that this Agreement is not an admission by the other party that it has violated any law or failed to fulfill any duty to one another.
2. **Separation from Employment.** Yamamoto is resigning from the City effective July 9, 2019, and Yamamoto and the City agree that the employment relationship between the Parties shall terminate and cease effective July 9, 2019 (the "Separation Date"). On the Separation Date, Yamamoto's Employment Contract entered into on December 4, 2014, and any and all amendments thereto (the "Employment Agreement"), will automatically terminate, and Yamamoto acknowledges and agrees that he will not be entitled to any of the benefits set forth in the Employment Agreement. Yamamoto acknowledges and agrees that pursuant to this Agreement, he will tender his resignation, which will be attached to this Agreement as Attachment A.
3. **Separation Payment.** As consideration for entering into this Agreement, the City agrees that it will pay Yamamoto the following:
 - a. **Severance Payment:** The equivalent of eleven (11) months' base salary in the amount of One Hundred Fifty-Nine Thousand One Hundred and Thirty-Seven Dollars and no/cents (\$159,137.00), to be paid in bi-monthly installments per the City's current payroll procedures. These payments shall be subject to lawful deductions. Payment under Section 3.a is defined as the "Severance Payment." No payment under this Paragraph 3.a will be made by the City prior to the Effective Date (as defined in Paragraph 7 below).
 - b. **COBRA Premiums:** A payment for Yamamoto's COBRA coverage for his own and his dependents medical/dental/vision premiums under the City's existing health care plan and consistent with his coverage under Section 5.B of the Employment Agreement, for up to eleven (11) months, as allowed under COBRA, as long as Yamamoto completes all required documentation to obtain such coverage. No payment under this Paragraph 3.b will be made by the City prior to the Effective Date (as defined in Paragraph 7 below). Nothing in this paragraph is intended to or does create any other rights or obligations of any kind on the part of the City with regard to payment of Yamamoto's COBRA coverage, except those specifically required by law.
 - c. **Accrued Vacation Leave Balance:** The Parties agree that Yamamoto has accrued unused vacation leave with the City, and the City agrees that it will pay Yamamoto for 720 hours of accrued and unused vacation leave pursuant to City

policy for a total gross amount of Sixty-Thousand and Ninety-One Dollars and Twenty Cents (\$\$60,091.20). This payment shall be subject to lawful deductions.

Yamamoto acknowledges and agrees that he would not otherwise be entitled to the payments identified in this Paragraph 3, and that any payments identified herein are in consideration for entering into this Agreement. Yamamoto further understands and agrees that he will not receive any of the compensation outlined in this Agreement unless he executes this Agreement. Yamamoto also understands and agrees that this Agreement supersedes the Employment Agreement and any benefits or payments under this Agreement are not in addition to any benefits that may have been owed to Yamamoto under the Employment Agreement.

4. **Press Release.** The Parties agree that the City will release a mutually agreed upon press release in the form of Attachment B to this Agreement announcing Yamamoto's resignation from the City.
5. **References.** The City agrees that as long as Yamamoto directs all requests for references for future employment to the Director of Human Resources, the Director of Human Resources will provide the dates of service, position held, and last salary for Yamamoto.
6. **Release.** Yamamoto specifically acknowledges and accepts the City's undertakings in this Agreement as full settlement of any and all claims, known or unknown, arising out of or related to Yamamoto's employment or association with the City, including his separation from employment. This release by Yamamoto includes, but is not limited to, any claims for damages or attorney's fees, breach of contract and/or estoppel, lost equity-based compensation or lost salary or other benefits, libel, slander, fraud, misrepresentation, or wrongful discharge, discrimination and/or retaliation under any federal, state or local statute or regulation, specifically including, but not limited to, any claims Yamamoto may have under the Fair Labor Standards Act, the Age Discrimination in Employment Act ("ADEA"), the Americans with Disabilities Act, Title VII of the Civil Rights Act, as amended, the Family and Medical Leave Act, the Washington Minimum Wage Act, the Washington Law Against Discrimination, and the Employee Retirement Income Security Act of 1974 (other than claims for vested benefits). This release also terminates Yamamoto's Tolling Agreement entered into by the Parties on May 27, 2010, and any and all amendments thereto (referred to as the "Tolling Agreement"), and Yamamoto understands and agrees that this paragraph 6 specifically terminates any rights that he may have had under the Tolling Agreement. These claims are examples, not a complete list, of the released claims, as it is the Parties' intent that Yamamoto release any and all claims, of whatever kind or nature, in exchange for the consideration by the City identified in this Agreement. The City similarly absolutely, irrevocably, and unconditionally releases and forever discharges Yamamoto from any and all claims, demands, or causes of action of any nature whatsoever, whether known or unknown, arising from Yamamoto's employment with the City. The Parties realize this constitutes a full and final settlement of any and all such claims, and except for obligations arising under this Agreement or as otherwise outlined in Paragraph 3, this Agreement releases the City (including the City's elected officials, councilmembers, officers, directors, employees, agents, and insurers, and anyone else against whom Yamamoto could assert a claim based on Yamamoto's association with

the City, including his separation from employment) from any further liability to Yamamoto (or to anyone else Yamamoto has the power to bind in this Agreement) in connection with such claims.

Nothing in this Agreement prohibits or prevents Yamamoto from filing a charge with or participating, testifying, or assisting in any investigation, hearing, or other proceeding before any federal, state, or local government agency, or otherwise limit, in any way, Yamamoto's rights and abilities to contact, communicate with, report matters to, or otherwise participate in any whistleblower program administered by any such agencies. However, to the maximum extent permitted by law, Yamamoto agrees that if such an administrative claim is made, he shall not be entitled to recover any individual monetary relief or other individual remedies.

7. **ADEA Release.** Yamamoto acknowledges and agrees that he is also waiving and releasing any rights he may have against the City under the Age Discrimination in Employment Act ("ADEA") and that this waiver and release is knowing and voluntary ("waiver and release" in this Paragraph 7 is referred to as "ADEA Release"). Yamamoto acknowledges and agrees that he has been advised by this writing that (a) this ADEA Release does not apply to any other rights or claims that may arise after the execution date of this Agreement; (b) he should consult with an attorney prior to executing this Agreement; (c) he has twenty-one (21) days within which to consider this Agreement (although he may choose to voluntarily execute this Agreement and to waive such period of consideration); (d) he has seven (7) days following the execution of this Agreement to revoke this ADEA Release; (e) the ADEA Release shall not be effective until the revocation period has expired (the "Effective Date"); and (f) nothing in this Agreement prevents or precludes Yamamoto from challenging or seeking a determination in good faith of the validity of this ADEA Release under the ADEA, nor does it impose any condition, precedent, penalties or costs for doing so, unless specifically authorized by federal law. Any revocation of the ADEA Release, as set forth above, shall be in writing and delivered to the City's counsel, by close of business on the seventh (7th) day from the date that Yamamoto signs this Agreement, at the following address:

Stephanie Alexander
Fisher & Phillips, LLP
1201 Third Avenue, Suite 2750
Seattle, WA 98101
Email: salexander@fisherphillips.com
Facsimile: "To: Stephanie Alexander" at 206-682-7908

Yamamoto understands and agrees that if he revokes this ADEA Release pursuant to this paragraph 7, the City may determine, in its sole discretion, that the Agreement is not effective and/or enforceable and Yamamoto will not be entitled to any of the benefits set forth in this Agreement.

8. **Tax Liability.** Yamamoto specifically acknowledges and agrees that the City has made no representations to him, regarding the tax consequences of any amounts received by Yamamoto for Yamamoto's benefit pursuant to this Agreement. Yamamoto understands

and agrees that any tax consequences and/or liability arising from the benefits identified in this Agreement shall be his sole responsibility. However, the City acknowledges that it remains liable for any payroll taxes or other taxes or fees that an employer is obligated to pay on such payments or benefits. Yamamoto specifically acknowledges and agrees that he will not at any time in the future seek consideration from the City other than as set forth in this Agreement.

9. **Cooperation.** After the Separation Date, and for the duration of Yamamoto's receipt of any payments from the City under this Agreement, Yamamoto agrees to reasonably cooperate in good faith in transferring his responsibilities at the City to other employees and otherwise ensuring a smooth transition of his former job duties, including by being available to answer questions and otherwise communicate with the City regarding issues related to the City or Yamamoto's former job duties. Moreover, Yamamoto acknowledges and agrees that he will cooperate with the City and its agents and/or attorneys in good faith as reasonably requested by the City, in any legal action or threatened litigation involving the City in which Yamamoto may be a witness or otherwise have knowledge related thereto, including by providing truthful information and testimony as reasonably requested by the City. Yamamoto further agrees that he will not voluntarily cooperate with any plaintiff or plaintiff's attorney or agent in any pending or threatened litigation against the City unless a court order compels him to do so.
10. **Non-Disparagement.** Yamamoto agrees that neither he, nor anyone acting on his behalf, will make any negative, derogatory, or disparaging comments, whether oral or written, about the City or its elected officials, officers, directors, managers, or agents, in any way, now or in the future. The City agrees that the City Attorney and the City Council will refrain from speaking in a disparaging manner about Yamamoto. Nothing in this Agreement shall be construed to prohibit the City's ability to comply with the requirements of chapter 42.56 RCW or any other legal requirements applicable to public entities. The Parties agree that any violation of this Paragraph 10 shall be subject to a \$5,000.00 liquidated damages penalty per occurrence or violation. The Parties agree that in the event of any violation of this Paragraph 10, damages would be difficult to calculate and this amount is a reasonable estimate of damages and not a penalty. The Parties agree that this liquidated damages amount is not the sole remedy for violation of this Paragraph 10 and the non-breaching party retains all rights and remedies available at law, including, without limitation, the right to seek a court order enforcing this Agreement.
11. **City Documents and Records.** Yamamoto agrees that all records, data, correspondence, manuals, notes, reports, notebooks, proposals, and any other documents concerning the City and its operations received by Yamamoto or created by Yamamoto on behalf of the City during his employment with the City (referred to as "City Documents") are, and shall be, property of the City and shall not be disclosed.
12. **Return of City Property.** Yamamoto acknowledges and agrees that he will return all of the City's property, including but not limited to any equipment, keys, purchasing cards, and City Documents in his possession or control, no later than the Separation Date of this Agreement.

13. **Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington and each party submits to the personal jurisdiction of the Federal and/or State Courts located in Pierce County, in any action or proceeding arising out of, or relating to, this Agreement and its enforcement, and agrees that all claims in respect to any such action or proceeding may be heard and determined in either such court. The Parties irrevocably waive any objection on the ground that any such action or proceeding in either of such courts has been brought in an inconvenient forum. Except as prohibited by law, the prevailing party in any lawsuit brought to enforce or interpret the terms of this Agreement, or any portion thereof, shall be entitled to recover its costs including reasonable attorneys' fees.

14. **Acknowledgments and Affirmations.**

- a. Yamamoto affirms that he has not filed, caused to be filed, or is a party to any claim, suit, or administrative charge against the City.
- b. Yamamoto affirms that he has been paid and has received all compensation, wages, bonuses, commissions, or benefits which are due and payable as of the date the City signs this Agreement.
- c. Yamamoto affirms that he has been granted any leave to which the City was entitled under the Family and Medical Leave Act or state or local leave or disability accommodation laws.
- d. Yamamoto affirms that he has no known workplace injuries or occupational diseases.
- e. Yamamoto represents that he is not enrolled in the Medicare program, was not enrolled in the Medicare program during employment or anytime from his Separation Date through the date of this Agreement, and he has not received Medicare benefits for medical services or items related to, arising from, or in connection with the matters released herein. The City further represents and warrants that no Medicaid payments have been made to or on his behalf and that no liens, claims, demands, subrogated interests, or causes of action of any nature or character exist or have been asserted arising from or related to of the matters released in this Agreement. Yamamoto further agrees that he, and not Releasees, shall be responsible for satisfying all such liens, claims, demands, subrogated interests, or causes of action that may exist or have been asserted or that may in the future exist or be asserted.

15. **Authority to Enter Agreement.** Yamamoto represents and warrants that he is the true party in interest, that he is fully authorized to execute this Agreement, and that he has not, and will not, sell, assign, transfer, convey, or otherwise dispose of any rights surrendered by virtue of this Agreement.


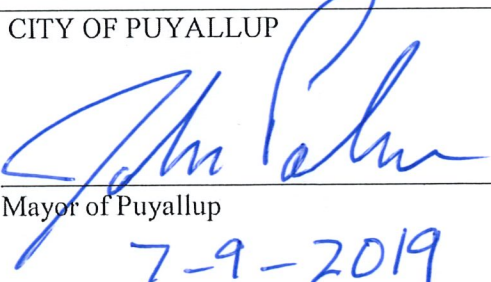
16. **Knowing Release.** Yamamoto acknowledges that he has been advised to consult with an attorney and has had an opportunity to do so before signing this Agreement, which Yamamoto has been given a reasonable period of time to consider.

17. **Entire Agreement.** This Agreement (i) contains the entire understanding of the Parties with respect to the subject matter covered; (ii) supersedes all prior or contemporaneous understandings including the Employment Agreement; and (iii) may only be amended in a written instrument signed by both Parties. The terms and provisions of this Agreement are contractual and not a mere recital.
18. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of any heirs, legal representatives, successors and assigns of Yamamoto.
19. **Survival.** Yamamoto acknowledges and agrees that if any provision of this Agreement, or compliance by Yamamoto or the City with any provision of this Agreement, constitutes a violation of any law, or becomes unenforceable and/or void, the remaining provisions of this Agreement will remain in full force and effect.
20. **Council Review and Approval.** This Agreement was reviewed and approved by the Puyallup City Council upon proper notice at open public meeting on July 9, 2019, by a vote of 7 for, 0 against, and 0 abstentions, with 0 council members absent, and the Mayor of the City of Puyallup is directed to sign the Agreement on behalf of the City of Puyallup.

THE UNDERSIGNED HAS READ THE FOREGOING RELEASE AND FULLY UNDERSTANDS IT.

Signed, sealed and delivered this 9th day of July, 2019.

CAUTION: READ BEFORE SIGNING BELOW

KEVIN YAMAMOTO	CITY OF PUYALLUP
	
Kevin Yamamoto	Mayor of Puyallup
<u>7-9-2019</u>	<u>7-9-2019</u>
Date	Date

ATTEST:

APPROVED AS TO FORM:

Attest:

Mary Winter
City Clerk

Approved as to Form:

Joseph H. Bell
City Attorney

ATTACHMENT A

Please take note that effective _____, I will be resigning my position as City Manager of Puyallup to pursue other opportunities.

ATTACHMENT B

Effective July 1, 2019, Kevin Yamamoto tendered his resignation as City Manager for the City of Puyallup. Kevin has enjoyed his time as City Manager, but has decided that he wants to pursue other opportunities. He remains committed to ensuring a smooth transition of his responsibilities as City Manager and plans to continue working in cooperation with the City to ensure that there will be no interruption of any City operations for the citizens of Puyallup. Kevin enjoyed working with the community and city staff in Puyallup and wishes everyone the best. The City thanks Kevin for his service.